

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LML Patent Corp.

Plaintiff,

v.

National Bank of Daingerfield, et al.

Defendants.

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Case No. 2:09-CV-180

Jury Trial Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff LML Patent Corp. ("LML") files this First Amended Complaint for Patent Infringement.

PARTIES

1. LML is a Delaware corporation with offices in Delaware, 1209 Orange Street, Wilmington, DE 19801 and Texas, 505 E. Travis, Suite 216, Marshall, Texas 75670.

2. Texas Heritage National Bank is a Texas state financial institution, with its principal place of business at P.O. Box W, 107 Webb Street, Daingerfield, Texas 75638-0852, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

3. PlainsCapital Bank is a Texas state financial institution, with its principal place of business at 2911 Turtle Creek Boulevard, Suite 700, Dallas, Texas 75219, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

4. Southside Bank is a Texas state financial institution, with its principal place of business at 1201 S. Beckham Avenue, Tyler, Texas 75701-3320, which is doing

business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

5. First Bank is a corporate fiduciary organized and existing under the laws of Missouri, with its principal place of business at 11901 Olive Boulevard, Saint Louis, Missouri 63141-6736, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

6. The American National Bank of Texas is a Texas state financial institution, with its principal place of business at 102 W. Moore Avenue, Terrell, Texas 75160-3114, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

7. American Bank of Texas is a Texas state financial institution, with its principal place of business at 2011 Texoma Parkway, P.O. Box 1234, Sherman, Texas 75090-2688, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

8. Comerica, Inc. is a financial services company headquartered in Dallas, Texas, with its principal place of business at Comerica Bank Tower, 1717 Main St., Dallas, TX 75201, which is doing business and infringing LML's patents in the Eastern District of Texas and elsewhere in the United States.

JURISDICTION AND VENUE

8. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

10. Defendants have sufficient contacts with the Eastern District of Texas to subject it to the personal jurisdiction of this Court for purposes of this Complaint, including, without limitation, acts of infringement of LML's patents committed by each Defendant within this District.

11. Venue is proper in the Marshall Division of the Eastern District of Texas pursuant to 28 U.S.C. § 1391(b)-(c) and 28 U.S.C. § 1400(b).

GENERAL ALLEGATIONS

12. LML is a subsidiary of LML Corporation.

13. LML holds all right, title, and interest in and to United States Patent No. RE 40,220, entitled "Checkwriting Point of Sale System", (hereinafter "the '220 Patent" or the "Patent-in-Suit"). A copy of the '220 Patent is attached as Exhibit A to this Complaint.

14. Defendants provide products and services for payment services that fall within one or more claims of the '220 Patent.

15. Defendants infringe the Patent-in-Suit directly, contributorily and/or by active inducement by importing, manufacturing, using, marketing, distributing, selling, and/or supporting payment services.

COUNT I **Infringement of the '220 Patent**

16. Defendants have infringed and continue to infringe the '220 Patent in this District and elsewhere in the United States by their manufacture, importation, sale, offering for sale, and/or use of payment services without authority or license of LML.

17. Defendants have contributorily infringed and/or induced others to infringe and continue to contributorily infringe and/or to induce others to infringe the '220 Patent in this

District and elsewhere in the United States by their manufacture, importation, sale, offering for sale, and/or use of the payment services without authority or license of LML.

18. Defendants' acts have caused, and unless restrained and enjoined, will continue to cause, irreparable injury and damage to LML and its affiliates for which there is no adequate remedy at law. Unless enjoined by this Court, Defendants will continue to infringe the '220 Patent.

PRAYER FOR RELIEF

WHEREFORE, LML requests the following relief:

19. That Defendants and their parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors, and assigns, and all those persons in active concert or participation with them, or any of them, be enjoined from making, importing, using, offering for sale, selling, or causing to be sold any product or service falling within the scope of any claim of the Patent-in-Suit, or otherwise infringing or contributing to or inducing infringement of any claim of the Patent-in-Suit;

20. That LML be awarded its actual damages;

21. That LML be awarded pre-judgment interest and post-judgment interest at the maximum rate allowed by law;

22. That the Court order an accounting for damages;

23. That the Court declare this to be an exceptional case pursuant to 35 U.S.C. § 285 and award LML its attorneys' fees;

24. That the Court award enhanced damages pursuant to 35 U.S.C. § 284;

25. That the Court award a compulsory future royalty;

26. That LML be awarded costs of court; and

27. That LML be awarded such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, LML demands a trial by jury on all issues triable of right by a jury.

DATED: April 8, 2010

Respectfully submitted,

/s/Melissa Richards Smith

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**ATTORNEYS FOR PLAINTIFF
LML PATENT CORP.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by U.S. mail or facsimile transmission, on this the 8th day of April, 2010.

/s/Melissa Richards Smith
Melissa Richards Smith